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JOHN F. DAVIS, CLERK

In the
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 1177

DOUBLE EAGLE LUBRICANTS, INC.,
Appellant,

VERSUS

THE STATE OF TEXAS,
Appellee.

PETITION FOR REHEARING

JOHN B. OGDEN
1408-9 Liberty Bank Building
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Attorney for Appellant,
Double Eagle Lubricants, Inc.

June, 1966

UTTERBACK TYPESETTING CO., 13 SO. WALKER, OKLAHOMA CITY, PH. CE 5-0030

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AUTHORITIES

Cases:

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Comes now the appellant, Double Eagle Lubricants, Inc., and shows to the Court that this Court dismissed the appeal in this cause.

Both the appellant and the appellee believed that a three-judge court should be convened pursuant to 28 U.S.C., Sec. 2281. The court was convened and thereafter this Court rendered its opinion in *Swift and Company, Inc.* v. *Wickham,* 382 U.S. 111, 86 S.Ct. 258, 15 L.Ed.2d 194. Whether or not the Court has jurisdiction of the appellant's direct appeal, under 28 U.S.C., Sec. 1253, depends on the issues involved, and whether the three-judge court was required to hear and determine the appellant's action to enjoin the enforcement of Article No. 1106(b), Vernon's Penal Code. The appellant believed that it should not be

prosecuted criminally under the Texas Law by reason of the fact that it was engaged in Interstate Commerce, which was admitted and, therefore, it was protected under the Commerce Clause of the United States and by reason of the further fact that the labeling of this motor oil was required by the Federal Trade Commission and, therefore, the Federal Government had preempted the labeling of motor oil shipped in Interstate Commerce, and by virtue of the facts, the law and the constitutional questions involved, this case should have been presented to a three-judge court, as was done in New Mexico, involving this appellant and the State of New Mexico.

The appellant now shows that in presenting the appeal, it did so in good faith, believing that it had this right under the law.

The appellant, therefore, shows that it would be unjust to deny to this appellant the right of appeal and subject it to the penal laws of the State of Texas.

The appellant, therefore, shows to this Honorable Court that since it believed that this Court had jusidiction and had acted in good faith, that this Court should now grant a rehearing in this cause and direct the District Court of the Northern District of Texas to vacate its judgment and re-enter the same, so that the right of the appellant to present its appeal to the United States Court of Appeals of the Fifth Circuit will not be denied, and that it will have full opportunity thereby to be heard.

This appellant further shows that if the appeal had been lodged in the United States Court of Appeals for the Fifth Circuit and had it been held improper, then the Court

of Appeals would have been powerless to grant any relief to the appellant.

This appellant, therefore, most respectfully petitions and requests this Honorable Court to either grant a rehearing in this cause or to direct the District Court to reenter its judgment, in order that the appellant may appeal to the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

JOHN B. OGDEN
1408-9 Liberty Bank Building
Oklahoma City, Oklahoma

Attorney for Appellant,
Double Eagle Lubricants, Inc.

June, 1966

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing Petition for Rehearing has been served upon the Appellee by depositing same in the United States Mail on the _____ day of June, 1966, addressed to the Honorable Waggoner Carr, Attorney General of Texas, Austin, Texas.

JOHN B. OGDEN

CERTIFICATE OF COUNSEL

I hereby certify that this Petition for a Rehearing is presented in good faith and not for delay, and in order that substantial justice may be due, and it is presented in accordance with Rule No. 58.

JOHN B. OGDEN

END